ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
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	)	
	)	

COMMENTS OF
INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. ("Intermedia"), hereby submits these comments on the Federal Communications Commission's ("FCC" or "Commission") *Fourth Further Notice of Proposed Rulemaking ("FNPRM")* in the above-captioned proceeding.[1]

I. INTRODUCTION

In its *UNE Remand Order*, the Commission concluded that "a requesting carrier is entitled to obtain existing combinations of loop and transport between the end user and the incumbent LEC's serving wire center on an unrestricted basis at unbundled network element prices," and that a carrier that is collocated in a serving wire center is free to order combinations of loops and dedicated transport to that serving wire center as unbundled network elements in

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[1] *Implementation of the Local Telecommunications Provisions of the 1996 Act,* CC Docket No. 96-98, *Fourth Further Notice of Proposed Rulemaking* (rel. Nov. 5, 1999) ("*UNE Remand Order*"); as modified by *Implementation of the Local Telecommunications Provisions of the 1996 Act,* CC Docket No. 96-98, *Supplemental Order*, (rel. Nov. 24, 1999) ("*Supplemental Order*") (collectively *"FNPRM"*).

order to substitute incumbent LEC's regulated Special Access services.[2] In response to concerns raised by allowing the conversion of existing regulated Special Access services to combinations of unbundled loops and transport (i.e. enhanced extended links or "EELs") the Commission, on November 24, 1999, modified the conclusion it reached in paragraph 486 of the *UNE Remand Order*, and stated that ILECs *may* constrain the use of combinations unbundled loops and transport network elements that are being utilized as a substitute for Special Access services which support the universal service fund.[3] In so doing, the Commission noted that its modification did not affect the ability of CLECs to utilize EELs to provide local exchange service or exchange access service (to the extent a carrier is collocated and purchasing loops to combine with self-provisioned transport). In addition, the Commission expanded the scope of its *FNPRM* to seek comment on whether there is statutory basis for the Commission to allow ILECs to restrict the provision of combinations of loops and transport facilities as unbundled network elements.

In these comments Intermedia addresses several of the issues set forth in the Commission's *FNPRM*. Specifically, Intermedia submits that the Commission does, indeed, posses both the statutory authority and the public policy justification to restrict the use of loop and transport combinations in order to realize the pro-competitive goals of the 1996 Act and to ensure that the universal service fund is implemented in a manner consistent with the Act. Intermedia proposes two alternative mechanisms that the Commission should consider, both of which would make the EEL available to providers of competitive local services while at the same time addressing the Commission's concerns regarding the legal and policy ramifications of

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2 *UNE Remand Order*, ¶486.

3 *Supplemental Order*, ¶¶ 4, 7.

applying the Commission's unbundling rules in such a way that could cause a significant reduction of ILEC Special Access revenues.

II. THE COMMISSION HAS AMPLE AUTHORITY AND COMPELLING PUBLIC POLICY JUSTIFICATION TO RESTRICT THE USE OF COMBINATIONS OF LOOPS AND TRANSPORT

In the Commission's UNE Remand proceeding several ILECs argued that allowing the use of UNEs for the provision of exchange access would "have significant policy ramifications."[4] Specifically, BellSouth expressed its concern that allowing CLECs to substitute the use of combinations of unbundled loops and transport, purchased at TELRIC, would allow carriers to substitute UNE combinations for ILEC's regulated Special Access services, thereby resulting in highly disruptive rate shock, and undermining the universal service program.

On September 2, 1999, in response to both the Commission's concern that defining "EELs" in a way that allowed unrestricted conversion of existing Special Access lines used for transport of circuit switched voice traffic would result in an unacceptably large and rapid reduction of ILEC access revenues, and its own concerns that such conversions would undermine the investment that facilities-based carriers have made in competing facilities Intermedia, along with Bell Atlantic, Allegiance Telecom, and Time Warner Telecom submitted a joint *ex parte* presentation in which the parties concluded that the Commission possessed the requisite authority to impose certain usage restrictions upon unbundled loop and transport network element combinations.[5]

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4 *UNE Remand Order*, ¶ 485.

5 Letter from Susanne Guyer, Assistant Vice President Federal Regulatory, Bell Atlantic, to Magalie R. Salas, Secretary, CC Docket 96-98 (filed Sept. 2, 1999) ("*Joint Ex Parte*").

The *Joint Ex Parte* noted that, pending transition to a fully competitive local market, it is appropriate for the Commission to take specific steps to restrict conversion of Special Access circuits to UNE combinations priced at TELRIC. Specifically, the *Joint Ex Parte* stated that:

- Under Section 251 under the Commission's Section 251(d) "necessary" and "impair" rules entrance facilities need not be made available;
- The Commission should impose certain conditions upon the obligation of ILECs to provide loop and transport elements
- The Commission should make the availability of loop/transport network elements subject to the following conditions:
    - ¤ Loop transport combinations for DS1 and above should be available only when the CLEC provides an integrated local/toll service to the customer and handles at least one third of the customer's local traffic;
    - ¤ At least 50% of the activated channels of the DS1 loop must each carry at least 5% local voice traffic, and at least 10% of the total traffic of the entire DS1 facility must be local voice traffic;
    - ¤ When loop/transport combinations include multiplexing (DS1 to DS3), each of the individual DS1 circuits must meet the above conditions;
    - ¤ Loop/transport combinations must terminate at a carrier's collocation arrangement in the LATA; not at a carrier's switch or other point of presence.

Intermedia continues to believe that the proposal set forth in the *Joint Ex Parte* provides the Commission with a workable solution that addresses the valid concerns raised by the large reduction in ILEC Special Access revenues and the corresponding decrease in universal service support. However, to the extent the Commission finds that usage restrictions, as outlined in the *Joint Ex Parte* and reiterated above, would be too difficult to implement, Intermedia now proposes an alternative approach that will lead to the same result as the original proposal.

III. THE COMMISSION MAY CONSIDER RESTRICTING CONVERSION OF SPECIAL ACCESS LOOP/TRANSPORT COMBINATIONS TO CIRCUITS THAT TERMINATE IN SWITCHES WITH DATA OR LOCAL SERVICE FUNCTIONALITY

In light of recent discussions among various members of the industry, Intermedia proposes that the Commission could establish interim rules that would allow CLECs to convert Special Access circuits to UNE loop/transport combinations only to the extent that such circuits terminate in CLEC switches that provide local service functionality. This approach would use *switch capability* rather than usage requirements, to ensure that carriers do not use loop/transport combinations solely for interexchange access.

Specifically, Intermedia submits that the Commission adopt the following rules:

> An ILEC must provide unbundled loop and/or dedicated interoffice transport network elements, or convert existing telecommunications services to these UNEs, to requesting CLECs who use these UNEs to provide ; 1) local exchange services, 2) local exchange plus associated exchange access, or 3) provide customers with access to advanced services, such as frame relay, ATM, xDSL. The Commission will not require ILECs to make unbundled loop and/or dedicated interoffice transport network elements available as a substitute for services that are predominantly interexchange voice services, such as traditional Special Access services, interexchange private line services or dedicated transport portion of switched access services. Also, the Commission will not require ILECs to connect UNE loops to Special Access services as a substitute for channel terminations nor to connect UNE transport to Special Access services as a substitute for channel mileage.
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> A CLEC will be presumed to be providing local exchange services when a UNE loop, or UNE loop plus transport combination, terminates an end user connection to the initial point of a local switching function (for voice and data). A CLEC will be presumed to be providing customers with access to advanced services when a UNE loop, or UNE loop plus transport combination terminates in a Digital Subscriber Line Access Multiplexer, Asynchronous Transfer Mode switch, frame relay switch or its equivalent.
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> Access to advanced services are those that can be supported by loops that terminate in a Digital Subscriber Line Access Multiplexer, Asynchronous Transfer Mode switch, frame relay switch or other high speed broadband switches. Advanced services are those defined in the Telecommunications

> Act of 1996 at §706(c)(1) (" advanced telecommunications capability is defined without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.").

Intermedia submits that in adopting this language, it is essential that the Commission make clear that conversion of Special Access to loop/transport combinations will not in any way restrict their use for data and advanced service applications. Any requirement imposing a "local usage" restriction would be inconsistent with the Commission's determination that dedicated connections to Internet service provider ("ISP") are inherently jurisdictionally interstate.[6] Adoption of a requirement that loop/transport combinations carry mostly local traffic would effectively preclude competitive carriers from taking advantages of the efficiencies associated with the use of EELs in their network topology, and thereby prevent them from serving this critical segment of the market. Moreover, in the *UNE Remand Order* the Commission made clear that CLECs would not be bound by usage restrictions when they deployed packet switching technologies.[7]

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6 *See GTE Tel. Operating Cos.; GTOC Tariff No. 1; GTOC Transmittal No.* 1148, CC Docket 98-79, 13 FCC Rcd 22466 (rel. Oct. 30, 1998).

7 In the UNE Remand Order the Commission found that "a component of the packet switching functionality, and included in our definition of packet switching is the Digital Subscriber Line Access Multiplexer (DSLAM). The DSLAM splits voice (low band) and data (high band) signals carried over a copper twisted pair. DSLAM equipment sometimes includes a splitter. If not, a separate splitter device separates voice and data traffic. The voice signal is transmitted toward a circuit switch, and the data from multiple lines is combined in packet or cell format and is transmitted to a packet switch, typically ATM or IP. The DSLAM combines: (1) the ability to terminate copper customer loops (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); (2) the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; (3) the ability to extract data units from the data channels on the loops; and (4) the ability to combine data units from multiple loops onto one or more trunks that connect to a packet switch or packet switches. We decline to adopt proposed definitions of packet switching that exclude DSLAMs from the packet switching functionality.... Accordingly, we include the DSLAM functionality, with the routing and addressing functions of packet switches, in our functional definition of packet switching." *UNE Remand Order,* ¶ 303, 304.

Furthermore, adoption of the restrictions outlined above would be in keeping with the technology-neutral underpinnings of the Act.[8] In implementing these rules, the Commission must make clear that all advanced services technologies are available, including ATM, Frame Relay, and IP. The Commission must adhere to its policy of not favoring one "flavor" of digital technology over others. As the Commission stated in the *UNE Remand Order:*

> Despite the encouraging signs of investment in facilities used to provide advanced services described above, we are mindful that regulatory action should not alter the successful deployment of advanced services that has occurred to date...We are mindful that, in such a dynamic and evolving market, regulatory restraint on our part may be the most prudent course of action in order to further the Act's goal of encouraging facilities-based investment and innovation. Our overriding objective, consistent with the congressional directive in section 706, is to ensure that advanced services are deployed on a timely basis to all Americans so that consumers across America have the full benefits of the "Information Age." The advanced services marketplace is a nascent one.[9]

The diminution of Special Access revenues associated with the availability of unbundled loop/transport combinations is a problem that is confined to services that rely upon circuit switched traffic. By carving out a data technology exception, Intermedia's proposed restrictions squarely address the problem the Commission seeks to address, specifically, the diversion of ILEC Special Access revenue as a result of replacement of circuit switched applications services with UNEs.

Such a problem does not exist for pure data applications. As the Commission has observed, ILECs are just now beginning to roll out their data products on a ubiquitous basis. As the Commission stated in the *UNE Remand Order*, "today, both incumbent LECs and requesting

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8 As the Commission noted in its *Section 706 Advanced Services Order*, the Act is technologically neutral and is designed to ensure competition in all telecommunications markets. *See Section 706 Advanced Services Order,* ¶ 11.

9 *UNE Remand Order*, ¶¶ 316, 317.

carriers are at the early stages of deploying innovative technologies to meet the ever-increasing demand for high-speed, high-capacity advanced services."[10] ILECs have just begun to introduce new data services, and have deployed relatively few data circuits. As the Commission noted:

> Competitive LECs and cable companies appear to be leading the incumbent LECs in their deployment of advanced services. For example, in 1999, Rhythms expects to roll out xDSL services in 1,000 end offices nationwide. Covad's planned network deployment is expected to reach 51 MSAs by the end of 1999. In the past year, NorthPoint deployed facilities capable of transmitting xDSL signals in 17 metropolitan markets. NorthPoint plans to expand its DSL-based local networks from 25 major markets, representing 37 metropolitan statistical areas (MSAs), to 28 markets, or 61 MSAs, by the end of 1999. Qwest announced in August 1999, that it is now providing DSL service in 13 U.S. markets and plans to expand to more than 30 major markets by the end of 1999. In addition, EarthLink has partnered with Sprint to offer nationwide xDSL service. KMC Telecom Inc. announced aggressive rollout of DSL services with plans to introduce additional broadband applications by year-end.[11]

The nascent status data market means that the number of ILEC circuits involved in the provision of pure data applications (i.e. packet switched) is much lower that the number of circuits associated with circuit switched applications. As a result, allowing carriers to utilize unbundled loop/transport combinations for pure data applications does not result in the same loss of ILEC revenues.

IV. THE COMMISSION MUST REITERATE ITS FINDING THAT ILECs MUST USE THE ASR PROCESS TO EFFECT CONVERSIONS FROM SPECIAL ACCESS TO COMBINED UNEs WITHOUT DELAY OR ADDITIONAL COST

In its *UNE Remand Order*, the Commission mandated that requesting carriers be allowed to obtain EEL combinations by ordering the combination out of the ILEC's Special Access tariff,

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10 *UNE Remand Order*, ¶14.

11 *UNE Remand Order*, ¶ 307.

and then converting that pre-existing combination to UNEs, pursuant to rule 51.315(b).[12] Furthermore, the *UNE Remand Order* concluded that carrier conversions of Special Access circuits to UNE combinations should be available through the Access Service Request ("ASR") process, rather than the Local Service Request ("LSR") process, and that such conversions should not result in carriers experiencing significant delays in so doing because such "conversions" are really nothing more than simple billing changes. Specifically, the Commission stated that: "requesting carriers and incumbent LECs have developed routine provisioning processes to deploy the EEL using the ASR or Access Service Request process, and thus requesting carriers will not face material provisioning delays and costs to integrate the EEL into their networks."[13]

However, despite the Commission's clear directive, several ILECs have indicated to Intermedia that they may not allow carriers to order Special Access conversions through the ASR process. Specifically, in discussions with ILECs in pending interconnection negotiations, ILECs have indicated that they will not implement the Commission's *UNE Remand Order* as it relates to the conversion of Special Access arrangements via the ASR process. At least one ILEC has noted that conversion of Special Access to UNEs must be done pursuant to the LSR process, which the Commission has recognized, is inferior to the more automated ASR process. Such a requirement is inherently unreasonable because it forces manual processing of a service that requires only a simple name change, and should be fully automated. Moreover, Intermedia is aware of at least two ILECs that have suggested that Special Access conversions cannot be done until they establish "methods and procedures" to take the orders and implement the conversion.

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12 *UNE Remand Order*, ¶ 486.

13 *UNE Remand Order*, n. 581.

Intermedia therefore submits that in adopting rules pursuant to this *FNPRM*, the Commission should amplify its *UNE Remand Order* conclusion that CLECs be permitted to convert Special Access arrangements to UNEs through the ASR process. As the Commission stated in the UNE Remand Order, such conversions should happen quickly, and without additional cost utilizing the ASR process. The Commission should also clarify that ILECs must process conversion orders immediately upon the effective date of the *UNE Remand Order*, and the Commission should clarify that ILECs must convert both existing *and* future special access lines. In the absence of such a clarification, ILECs may take the position that new Special Access lines are not entitled to be converted to UNEs.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby certify that an original and 9 copies of the foregoing were served on this 19th day of January, 2000 upon the following:

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